Cite as 2009 Ark. 410

SUPREME COURT OF ARKANSAS

No. CV-09-308

Opinion Delivered: September 17, 2009

DARYL GUFFEY
APPELLANT

V.

KIM BILLINGS COUNTS AND OFFICE OF CHILD SUPPORT ENFORCEMENT
APPELLEES

APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT,
NO. E-95-1246-6

HON. MARK LINDSAY, JUDGE

COURT OF APPEALS AFFIRMED; CIRCUIT COURT AFFIRMED.

JIM HANNAH, Chief Justice

Appellant Daryl Guffey appeals the circuit court's order regarding child support awarded to appellee Kim Billings Counts. At issue is whether a noncustodial parent can receive a credit for years of overpayment to the child-support registry against four months of nonpayment. The circuit court concluded that a noncustodial parent cannot receive such credit. The court of appeals affirmed the circuit court, *see Guffey v. Counts*, 2009 Ark. App. 178, 315 S.W.3d 288, and Guffey petitioned for review, which we granted. When we grant a petition for review, we consider the appeal as though it had been originally filed in this court. *See, e.g.*, *Pest Mgmt., Inc. v. Langer*, 369 Ark. 52, 250 S.W.3d 550 (2007). On appeal, Guffey contends that the circuit court erred in retroactively modifying his child-support obligation based solely upon a private agreement. He also contends that the circuit court clearly erred in finding him in contempt for failure to pay child support and assessing child-support arrearages. We affirm the circuit court.

Guffey and Counts divorced in 1995. The circuit court awarded custody of the

parties' two sons to Counts and ordered Guffey to pay child support. After one modification, Guffey was obligated to pay $405 per month. In 2000, Guffey wrote Counts and provided copies of pay stubs showing his income had increased. He explained that he had used the chart from Administrative Order No. 10 to calculate his support obligation at $694 per month. Guffey suggested that this arrangement would "bring to an end either of us spending any more money on attorney fees."

At a prior hearing, the chancellor had emphasized that private agreements changing support were not binding. In response to Guffey's letter, Counts contacted her lawyer. She then requested more financial information from Guffey. She also suggested preparing an agreed order that her lawyer could present to the court to avoid additional attorney's fees. No modification order was ever entered. For seven years, Guffey paid the increased amount every month into the court's registry, noting on his check the month covered by the payment. The records showed the overpayments. Counts used the money each month for their sons' needs.

On September 20, 2007, the Office of Child Support Enforcement ("OCSE") petitioned the court to increase Guffey's monthly obligation. For the four following months, acting on the advice of counsel, Guffey paid no support. Guffey and OCSE eventually settled, resulting in an order requiring Guffey to pay $923.14 per month. Counts filed a petition for contempt, requesting that the court hold Guffey in contempt for the four-month gap in payments. Guffey responded that he was entitled to credit as to those months for his seven years of overpayments.

After a hearing, the court held Guffey in contempt and ordered him to pay, over

time, four months' worth of support at the earlier court-ordered amount of $405, for a total of $1620. The circuit court determined that Guffey "intended for each payment made to [Counts] from February 2000 through September 2007 to be child support," and that Guffey "never intended for the overage to be a credit toward future child support." The circuit court further determined that Counts relied upon Guffey's representations made in his letter, notifying her of the increase in his salary and his intent to increase his monthly payment of child support. The circuit court found that Counts incurred expenses for the children and budgeted for the children based upon the child support paid by Guffey each month. As such, the circuit court concluded that, "[b]ased upon principles of equity and equitable estoppel, [Guffey] is not entitled to credit as it would be wholly inequitable to allow [him] to claim a credit for the alleged overage paid since February 2000." Finally, the circuit court found that the overpayments made each month from February 2000 through September 2007 were gifts. Guffey now brings this appeal.

Our standard of review for an appeal from a child-support order is de novo on the record, and we will not reverse a finding of fact by the circuit court unless it is clearly erroneous. *Ward v. Doss*, 361 Ark. 153, 205 S.W.3d 767 (2005). As a rule, when the amount of child support is at issue, we will not reverse the circuit court absent an abuse of discretion. *Id.* However, a circuit court's conclusion of law is given no deference on appeal. *Id.*

A decree that contains a provision for the payment of child support shall be a final judgment until either party moves to modify the order. *See Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993). Retroactive modification of court-ordered support may only be assessed from the time that a petition for modification is filed, absent a specific finding of

fraud in procuring the existing support decree. *E.g.*, *Yell v. Yell*, 56 Ark. App. 176, 939 S.W.2d 860 (1997). In addition, circuit courts may not recognize private agreements modifying the amount of child support. *See Burnett*, *supra*.

We find no merit in Guffey's argument that, in essence, the circuit court's decision retroactively modified his child-support obligation by increasing it from $405, as set in the order filed September 1, 1999, to $694 per month, the amount he voluntarily paid for the period between February 2000 and September 2007, per a private agreement between Counts and him. Here, Guffey was obligated, by the 1999 order, to pay child support in the amount of $405 per month. This obligation continued until the order modifying support to $923.14 was entered in 2008. Accordingly, any payments over $405, made before the order modifying child support was entered in 2008, were voluntary, not court mandated.

Still, Guffey reasons that, because he was required by court order to pay only $405 per month, any overpayment he made should be considered a credit. We disagree. As a matter of law, a noncustodial parent is not entitled to credit for voluntary expenditures against child-support obligations. *See Glover v. Glover*, 268 Ark. 506, 598 S.W.2d 736 (1980). There is nothing in the law to prevent a noncustodial parent from being more generous in the maintenance of his or her child than the court has ordered. *See Loomis v. Loomis*, 221 Ark. 743, 255 S.W.2d 671 (1953). On the other hand, a noncustodial parent "might refuse to make any prepayment except upon the explicit understanding—and for the sake of the child's security we think it should be pretty explicit—that the excess should be applied in satisfaction of future obligations." *Id.* at 745, 255 S.W.2d at 673.

In this case, Guffey's overpayment was a voluntary expenditure of child support in

excess of what was required by the circuit court's order. Guffey was free, as any noncustodial parent is, to pay more child support than is required by law. He did so in this case. Without an explicit agreement with Counts that the overage constituted advance payment of court-ordered support and could serve as a credit for future payments of child support, Guffey was not entitled, as he did here, to forego child-support payments for four months.

Further, we find no merit in Guffey's argument that in *Glover*, we made a distinction between overpayments made through the child-support registry and voluntary payments made outside the child-support registry. In *Glover*, we held that the circuit court erred as a matter of law in awarding the appellee any credit for voluntary expenditures made by him for the benefit of his children. Voluntary expenditures in that case included $537 in additional support for his children, which he was not obligated to provide, and $2,589.44 in airfare so that his children could visit him. We also made mention of the fact that appellee "overpaid an undisputed $600," and this was noted merely to explain how we calculated the amount of arrearages due. *Glover*, 268 Ark. at 509, 598 S.W.2d at 737. Because there was no dispute about the overpayment, there was no analysis about overpayment. *Glover* did not, as Guffey urges, distinguish voluntary payments made through the child-support registry from voluntary payments made outside the child-support registry.

As to Guffey's remaining arguments on this point, we do agree with Guffey's contention that the circuit court clearly erred in finding that his voluntary overpayments were gifts to his children. The payments were clearly child support. Because we have determined that Guffey's overpayments were voluntary child-support payments, and that he is not entitled to credit for those voluntary expenditures, we need not address the parties'

arguments regarding estoppel.

We now turn to Guffey's argument that the circuit court erred in finding him in contempt for failure to pay child support and for assessing child-support arrearages. For four months, Guffey failed to pay child support, even though he was under court order to pay $405 per month. The disobedience of any valid judgment, order, or decree of a court having jurisdiction to enter it may constitute contempt. *Gatlin v. Gatlin*, 306 Ark. 146, 811 S.W.2d 761 (1991). The general rule is that before a person may be held in contempt for violating a court order, that order must be in definite terms as to the duties thereby imposed upon him or her, and the command must be expressed rather than implied. *Id.* In its 1999 order, the circuit court, in definite terms, ordered Guffey to pay child support through the court's registry in the amount of $405 per month. We affirm the circuit court's finding of contempt, as it is not clearly against the preponderance of the evidence.

We also affirm the circuit court's assessment of child-support arrearages. The circuit court found that Guffey failed to pay child support ordered in the amount of $405 per month, beginning in October 2007 through January 2008. Guffey was ordered to pay arrearages in the amount of $1620. The circuit court's finding that Guffey owed $1620 in child-support arrearages is not clearly erroneous.

Finally, we note that, in his reply brief, Guffey contends that OCSE lacks standing and is improperly joined with Counts in this appeal. We agree. OCSE settled with Guffey, and it did not participate in the hearing about the overpayment issue. The record reflects that, before the hearing, OCSE argued that its records showed a credit for Guffey, a position contrary to the position it now takes on appeal. Although OCSE and Counts filed a joint

brief, Counts is listed as pro se on the brief. OCSE has no standing to argue the issues on appeal and, moreover, OCSE cannot make new arguments on appeal. We deny OCSE's request that it be awarded fees for preparing the brief.

In sum, the circuit court did not err in determining that Guffey was not entitled to receive a credit for years of overpayment to the child-support registry against four months of non-payment. We affirm the circuit court's finding of contempt for failure to pay child support, as well as the circuit court's assessment of child-support arrearages.

Affirmed.

Charles M. Kester, for appellant.

Kim Billings Counts, pro se.

Andrew J. Ziser and *G. Keith Griffith*, for Office of Child Support Enforcement.